IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

(1) Chamber Summons No. 644 of 2005
in
Execution Application No. 352 of 2002
in
Summary Suit No.345 of 1999

M/s Wolstenholme International
Limited ..Plaintiff

vs.

Twin Start Industrial Corporation
and others ...Defendants

and

1. The Sheriff of Bombay & Anr. ...Respondents.

(2) Chamber Summons No. 646 of 2005
in
Execution Application No.351 of 2002
in
Summary Suit No.346 of 1999

M/s Wolstenholme International
Limited ..Plaintiff

vs.

Universal Trunk Depot & others ..Defendants

and

1. The Sheriff of Bombay & Anr. ..Respondents

Mr.Zal Andhyarujina with Mr.R.A.E.Saini i/b
Maneksha and Sethna for defendant no.4 in support.
Ms.Deepa Chavan with Ms.S.Surve i/b Little and Co.
for plaintiff
Mr.B.Shroff with Mr.A.B.Verma i/b Gagrat and Co.
for defendant no.2.
Ms.Nitya Mehta i/b M/s Nitya Sunil and Co. for
defendant no.3
Mrs.Varsha Vartak i/b M/s Madhekar and Co. for
defendant no.5

CORAM: A.M.KHANWILKAR J.
23rd August, 2005.

P.C.

. Heard counsel for the parties.

2. Both these chamber summonses are taken out by defendant no.4. Broad facts leading to filing of these chamber summonses are as under:

3. Exparte decree has been passed against the defendants in summary suit nos.345 of 1999 and 346 of 1999. The said decrees were put in execution in Execution Application Nos.352 of 2002 and 351 of 2002 respectively. The parties agreed for order in terms of the minutes of order dated 8th February, 2005 whereunder defendant nos.2 and 4 were to pay or arrange/cause to be paid to the plaintiffs/decree holders Rs.1,60,00,000/- (Rupees one crore and sixty lacs) on 2nd April, 2005 towards part satisfaction of the decree. Under clause 6 of the said minutes of order defendant nos. 2 and 4 were further obliged to pay or arrange/cause to be paid to the plaintiffs/decree holders the balance decreetal amount towards full and complete satisfaction of the decree on or before 30th June, 2005. In the present application defendant no.4 fairly accepts the liability to pay

the said amount. He has,however, expressed inability to pay the amount under the said minutes of order on the assertion that it is not clear as to whether the entire principal amount along with the interest accrued thereon should be paid over to the judgment creditor or the said defendants are obliged to deduct the amount towards tax deducted at source in terms of sec.195 of the Income Tax Act in relation to the amount towards the interest accrued on the principal amount. It is on account of this predicament defendant no.4 has not complied with the obligation under the minutes of order and instead has approached this Court for the reliefs claimed in the present chamber summonses which read thus:

"a) That this Hon'ble Court be pleased to declare that the 2nd and 4th Defendants are liable to deduct Tax at source on the amounts paid/payable to them to the plaintiffs Advocates pursuant to the Order dated 08.02.05

b) That this Hon'ble Court be pleased to declare the rate at which the 2nd and 4th Defendants are liable to deduct tax at source on the said amounts paid/payable

by them to the plaintiffs Advocates pursuant to the said order dated 08/02/05.

c) In the alternative to prayer clauses (b) above this Hon'ble Court be pleased to Order and Direct the plaintiffs to make an application to the Assessing Officer under section 195(3) of the Income Tax Act, 1961 for determination of the rate at which the Tax is to be deducted source.

d) That this Hon'ble Court be pleased to Order and direct the plaintiffs Advocates to forthwith refund to Defendant nos. 2 and 4 the amount of tax to be deducted at source on the said sum of Rs.2,05,00,000 (Rupees Two crores five lakhs only) paid to the plaintiffs Advocate pursuant to the said order dated 08.02.05;

e) That in the alternative to prayer (d) above, this Hon'ble Court be pleased to order and direct the 2nd and 4th defendants to deduct the amount of tax payable at source on the sum of

Rs.2,05,00,000/- and the balance decreetal amount from the balance decreetal amount payable to the plaintiffs by these defendants under Clause 6 of the order dated 08.02.05.

f) That pending the hearing and final disposal of this Chamber Summons this Hon'ble Court be pleased to restrain by an order and injunction, the plaintiffs' Advocates from remitting to the plaintiff in United Kingdom the sum of Rs.2,05,00,000/- or any part thereof or any further amounts that may be received by the plaintiffs' Advocates from Defendant Nos. 2 and 4 respectively.

g) That pending the hearing and final disposal of this Chamber Summons this Hon'ble Court be pleased to stay the operation of clause 6 of the Order dated 8th February, 2005;

h) That pending the hearing and final disposal of this Chamber Summons and in the event of the same not being heard and/or disposed of prior to 30.06.05 this

Hon'ble Court be pleased to continue the injunction restraining the sheriff of Bombay and the Commissioner and Taxing Master, High Court Bombay from taking any steps to auction/sell the movable and immovable properties of Defendant Nos. 2 and 4.

i) For ad-interim and interim reliefs in terms of prayer clause (d) to (h) above.

j) For such further and other reliefs as the nature and circumstances of the case may require.

k) For costs of this chamber summons be provided."

4. Having considered the rival submissions as far as the liability to pay the principal amount is concerned, the same is not in dispute. The Defendant No.4 is willing to satisfy that claim forthwith. It is agreed that the outstanding principal amount under the decree is in the sum of UK pounds 2,35,539.28. (i.e.UKP 88,284.64 + UKP 1,47,254.64). It is not in dispute that equivalent amount in Indian currency on the date of the decree

was 1 UKP = Rs.68.88, which would come to Rs.1,62,23,945.60 paise. In deed, interest on the abovesaid principal amount will have to be computed at the rate of 18% p.a. as per the decree till the amount is realised. It is agreed that the interest component so computed as of today (i.e. as on 23.8.2005) would come to Rs.2,57,88,363.40/- (Rupees Two crores Fifty Seven Lakhs Eighty Eight Thousand, Three Hundred Sixty Three and paise Forty only)

5. The only controversy raised before me by the Defendant No.4 is whether 15% of the interest component should be deducted by defendant no.4 and set apart to be paid directly to Income Tax Authority. Counsel appearing for the plaintiffs made attempt to persuade me to consider the question whether the judgment creditor is at all liable to pay tax on the interest accrued on the principal amount under the decree, relying on the decision of this Court reported in 2004(vol.265) IT Reports 254 in the case of Islamic Investment Co. Vs. Union of India. Reliance was also placed on the Double Taxation Avoidance Agreement between U.K. and the Govt. of India entered into in exercise of powers conferred under sec.90 of the Income Tax Act. The question whether the judgment

creditor is liable to pay income tax on the interest component to be payable to the judgment creditor, to my mind, can be resolved if the parties were to be relegated to adopt proceedings under chapter XIXB of Income Tax Act which provide for resolving such controversy by inviting advance rulings which will be binding on all concerned. All contentions in that behalf are kept open to be raised before the said Authority in Advance Ruling Proceedings under Chapter XIX B of the I.T.Act. Those proceedings will resolve the controversy with regard to 15% of the amount on interest component which it is agreed will be around Rs.38,68,254.50 (Rupees Thirty Eight Lakhs Sixty Eight Thousand Two Hundred Fifty Four and Paise fifty only) to be set apart and to be deposited in this Court under the present order. The said amount will be paid over to the concerned party after the decision is given in Advance Ruling Proceedings.

6. In other words, in my opinion, both the chamber summonses can be disposed of by directing the parties to adopt the following arrangement.

a) Defendant no.4 shall forthwith deposit a sum of Rs.2,19,54,038.00. (Rupees Two Crores Ninteen Lacs Fifty Four Thousand Thirty Eight only) This figure

has been arrived at on the basis of liability of defendant nos. 2 and 4 to pay remaining amount under the minutes of order being Rs.1,62,23,945.60 (Rupees One Crore Sixty Two Lacs Twenty Three Thousand Nine Hundred Forty Five and paise sixty only) towards the principal amount and Rs.57,37,092.40 (Rupees Fifty Seven Lacs Thirty Seven Thousand Ninety Two and Piase Forty only) towards the interest as on today at the rate of 18% p.a. on the principal amount. It is agreed that the aggregate of principal and interest component as of today as mentioned above comes to Rs.2,19,54,038.00/- Defendant no.4 shall deposit the said entire balance amount in this court forthwith. At this stage the learned counsel for defendant no.4 states on instructions that defendant no.4 will be able to deposit the balance amount on or before 8th September, 2005. If it is so, as agreed the defendant no.4 shall deposit further amount towards the interest accrued from today till the date of actual deposit in this Court at the rate of 18% on the outstanding amount.

b) After defendant no.4 deposits the amount as aforesaid the amount of Rs.39,00,000/- (Rupees Thirty Nine lacs only) be set apart towards the claim of income tax to be payable on the interest

accrued on the principal amount under the decree subject to such order to be passed by the appropriate authority in Advance Ruling Proceedings under chapter XIX B of the Income Tax Act. According to the calculations provided, as of today the judgment creditor would be liable to pay a sum of Rs.38,68,254.50 (Rupees Thirty Eight Lacs Sixty Eight Thousand Two Hundred Fifty Four and paise Fifty only) towards the Income Tax being the interest component at the rate of 15% in the event the decision in Advance Ruling Proceedings goes against the judgment creditor.

c) The balance amount shall be paid over to the judgment creditor on a written requisition made in that behalf to the Prothonotary and Sr.Master. In other words, on deposit being made in this Court the amount can be withdrawn by the judgment creditor except the amount referred to in clause (b). The judgment creditor undertakes to pay only differential Tax Deducted at source adjudicated by the Tax Authorities, if any. That assurance is accepted.

d) On entire amount being deposited as aforesaid by defendant no.4 in this Court, it is agreed that the decree will be marked as satisfied in full. In

that case the attachment order passed by this Court will stand vacated.

e) It is made clear that this order will not preclude defendant no.4 to proceed against defendant no.2 or any other defendant for apportionment of the proportionate amount which is payable by them under the decree. All questions in that behalf are kept open.

f) Besides, it will be open to defendant no.4 to make formal application before this Court requiring execution of mortgage documents by the officer of this court for and on behalf of defendant no.2. to enable raising of funds to satisfy the decree. If such application is made that will be considered on its own merits.

g) Defendant nos. 2 and 4 shall facilitate issuance of necessary declaration in favour of the judgment creditor to enable the judgment creditor to transfer the amount in accordance with law if required.

h) It is made clear that in case the defendant no.4 fails to deposit the amount in terms of this order it will be open to the judgment creditor to proceed

in accordance with law.

Ordered accordingly.